

MT LEGISLATIVE HISTORY

Chapter 711 19 85

Bill (H) 766 S _____

Original bill & hist. ☒ C

H. Committee on Natural Resources

S. Committee on Public Health, Welfare & Safety

Hearing Date(s) FEB 20 ☒ C

Hearing Date(s) MAR 25 ☒ C

FEB 22 ☒ C

MAR 27 ☒ C

_____ ☐ C

MAR 28 ☒ C

_____ ☐ C

_____ ☐ C

Date Out FEB 22 ☒ C

MAR 28 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Senate Finance & Claims

April 4

CHAIRMAN--JACOBSON, JUDY
NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: M-W-F

TIME: 12:30-2:30 P.M.

SECRETARY-GRAVELEY, ELAINE

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0720	3/04	3/13	3/18 3/27	CONCUR AS AMENDED		3-27
BROWN, JAN			ESTABLISHING A LONG-TERM CARE OMBUDSMAN			
HB0729	3/04	3/08		CONCUR		3-8
SCHULTZ, JAMES M.			ROLE OF, ADMISSION TO, AND DISCHARGE FROM MONTANA CENTER FOR THE AGED			
HB0730	2/22	3/18	3/23	CONCUR		3-23
COHEN, BENJAMIN R.	(BEN)		REQUIRES THAT 5% OF CERTAIN FED. FUNDS BE SPENT FOR HOME WEATHERIZATION			
HB0737	3/04	3/13	3/16	CONCUR AS AMENDED		3-15
BERGENE, TONI R.			ADULT PROTECTIVE SERVICE TEAMS TO ASSIST OLDER PERSONS			
HB0738	3/04	3/08	3/13 3/20	CONCUR		3-20
ADDY, KELLY			GENERALLY REVISE MEDICAL LEGAL PANEL ACT			
HB0743	3/04	3/08	3/15 3/18	CONCUR AS AMENDED		3-18
MILLER, RON			SUBROGATION RIGHTS OF SRS - 3RD PARTY LIABILITY FOR MEDICAL BENEFITS			
HB0748	3/04	3/13		CONCUR		3-13
KITSELMAN, LES			ELIGIBILITY FOR STATE SERVICES TO DEVELOPMENTALLY DISABLED PERSONS			
HB0758	3/04	3/20	3/23 3/27	ADVERSE REPORT		3-27
WINSLOW, CAL			REQUIRE SCREENING COMMITTEES TO REVIEW CHILD PLACEMENT IN A CARE FACILITY			
HB0766	3/06	3/22	3/25 3/27 3/28	CONCUR AS AMENDED	FINANCE & CLAIMS	3-28
REAM, BOB			REMEDIAL ACTION FUND TO ALLEVIATE OR PREVENT WATER CONTAMINATION			
HB0783	3/04	3/11	3/27	ADVERSE REPORT		3-27
MILES, JOAN			MONTANA LONG-TERM CARE RESIDENTS' BILL OF RIGHTS ACT			
HB0798	3/05	3/20	3/27	ADVERSE REPORT		3-27
MILES, JOAN			PHYSICALLY DISABLED - SRS AUTHORIZED TO PROVIDE SERVICES - COMMUNITY HOMES			

HOUSE BILL NO. 766

INTRODUCED BY REAM, HALLIGAN, B. WILLIAMS, MOHAR,
KRUEGER, DARKO, GARCIA, ECK, REGAN, ADDY, STIMATZ,
JACOBSON, D. BROWN, KEENAN, SHAW, IVERSON, LYNCH,
HARPER, RANEY, BRADLEY, COHEN, COBB, LORY, TVEIT,
CONNELLY, FRITZ, MILES, DRISCOLL, JANET MOORE,

GRADY, KADAS, HARRINGTON, HARP

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO TAKE
REMEDIAL ACTION TO PREVENT OR ALLEVIATE RELEASE OF HAZARDOUS
OR DELETERIOUS SUBSTANCES INTO THE ENVIRONMENT; ESTABLISHING
A SPECIAL FUND FOR REMEDIAL ACTION; PROVIDING FOR FUNDING OF
THE SPECIAL FUND; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through
7], unless the context requires otherwise, the following
definitions apply:

(1) "Department" means the department of health and
environmental sciences provided for in Title 2, chapter 15,
part 21.

(2) "Fund" means the environmental quality protection
fund established in [section 2].

(3) "Hazardous or deleterious substance" means a
substance that poses an imminent and substantial threat to
public health, public welfare, or the environment and that
is:

(a) defined as a hazardous waste pursuant to Title 75,
chapter 10, part 4;

(b) water pollution as defined in 75-5-103; or

(c) air pollution as defined in 75-2-103.

(4) "Release" means any spilling, leaking, pumping,
pouring, emitting, emptying, discharging, injecting,
escaping, leaching, dumping, or disposing of a hazardous or
deleterious substance either directly into the environment
or in a manner in which the substance can reasonably be
expected to enter the environment if not contained, removed,
or abated, but excludes releases confined to the indoor
workplace environment.

(5) "Remedial action" includes all investigation,
monitoring, cleanup, restoration, abatement, removal,
replacement, and other actions necessary or appropriate to
respond to a release.

Section 2. Environmental quality protection fund.

(1) There is created in the state special revenue fund an
environmental quality protection fund to be administered as
a revolving fund by the department. The department is
authorized to expend amounts from the fund necessary to

1 carry out the purposes of [sections 1 through 7].

2 (2) The fund may be used to carry out the provisions
3 of [sections 1 through 7] and for remedial actions taken by
4 the department pursuant to [sections 1 through 7] in
5 response to a release of hazardous or deleterious
6 substances.

7 (3) There must be deposited in the fund:

8 (a) all department expenditures recovered pursuant to
9 [section 6]; and

10 [(b) funds received from the legacy program state
11 special revenue account established by [section 4 of the
12 Montana Legacy Act, Senate Bill No. 277] as emergency
13 requests made pursuant to [section 5(5) of the Montana
14 Legacy Act, Senate Bill No. 277].]

15 (4) As long as the amount of money in the fund is
16 sufficient to defray the costs of remedial action taken
17 pursuant to [sections 3 and 4], the department is authorized
18 to make expenditures from the fund for such remedial action
19 without prior approval from the governor. [Whenever the
20 amount of money in the fund is insufficient to carry out
21 remedial action, the department may apply to the governor
22 for a grant from the contingency fund of the legacy program
23 state special revenue account pursuant to [section 5(5)] of
24 the Montana Legacy Act.]

25 [(5) The fund is statutorily appropriated as described

1 in [section 2 of HB 12] for the purposes described in
2 subsection (2).]

3 Section 3. Remedial action. (1) The department may
4 take remedial action necessary and appropriate to protect
5 the public health, public welfare, or the environment
6 whenever it determines that:

7 (a) there has been a release or there is a substantial
8 threat of a release; and

9 (b) the appropriate remedial action will not be done
10 properly and expeditiously by the owner or operator of the
11 vessel, vehicle, or facility from which the release emanates
12 or by any other responsible party.

13 (2) Whenever the department is authorized to act
14 pursuant to subsection (1) or has reason to believe that a
15 release has occurred or is about to occur, the department
16 may undertake any investigation, monitoring, survey,
17 testing, or other information-gathering that is necessary
18 and appropriate to identify the existence, nature, origin,
19 and extent of the release or the threat of release and the
20 extent and imminence of the danger to the public health,
21 public welfare, or the environment.

22 (3) Any person responsible for the release must take
23 immediate action to contain, remove, and abate the release.
24 Except as provided in [section 4], the department is
25 authorized to draw upon the fund in order to take action

1 under subsections (1) and (2) if it has made diligent good
2 faith efforts to determine the identity of the party or
3 parties responsible for the release or threatened release
4 and:

5 (a) is unable to determine the identity of the
6 responsible party or parties in a manner consistent with the
7 need to take timely remedial action; or

8 (b) the party or parties determined by the department
9 to be responsible for the release or threatened release have
10 been informed in writing of the department's determination
11 and have been requested by the department to take
12 appropriate remedial action but are unable or unwilling to
13 take such action in a timely manner.

14 (4) The written notice to a responsible party must
15 inform the responsible party that if that party is
16 subsequently found liable pursuant to [section 6], he may be
17 required to reimburse the fund for the costs of the remedial
18 action taken by the department and may be subject to
19 punitive damages.

20 Section 4. Emergency action. If the department
21 determines that immediate response to an imminent threat to
22 public health, public welfare, or the environment is
23 necessary to avoid substantial injury or damage to persons,
24 property, or resources, remedial action may be taken
25 pursuant to [section 3(1) and (2)] without the prior written

1 notice required by [section 3(3)(b)]. In such a case, the
2 department must give subsequent written notice to the
3 responsible party within 5 days after the action is taken,
4 describing the circumstances which required the action to be
5 taken without prior notice.

6 Section 5. Actions -- general provisions. (1) No
7 action taken by any person to contain or remove a release,
8 whether the action is taken voluntarily or at the request of
9 the department or its designee, may be construed as an
10 admission of liability for the discharge.

11 (2) Actions taken by the department pursuant to
12 [sections 3 and 4] are not subject to the public bidding
13 requirements of Title 18.

14 Section 6. Reimbursement and penalties -- proceedings
15 -- defenses. (1) Subject only to the defenses set forth in
16 subsection (3), a party responsible for a release is liable
17 for:

18 (a) all costs of remedial action taken by the
19 department pursuant to [sections 1 through 7]; and

20 (b) damages for injury to, destruction of, or loss of
21 natural resources caused by the release or threatened
22 release.

23 (2) If the responsible party fails, without sufficient
24 cause, to properly provide remedial action upon notification
25 by the department pursuant to [section 3(3)(b)], the

1 responsible party may be liable for punitive damages in an
2 amount not to exceed two times the amount of any costs
3 incurred by the department pursuant to [section 6].

4 (3) The department may initiate civil proceedings in
5 district court to recover costs, damages, or penalties under
6 subsections (1) and (2). Venue for any action to recover
7 costs, damages, or penalties lies in the county where the
8 release occurred or where the responsible party resides or
9 has its principal place of business or in the district court
10 of the first judicial district.

11 (4) No party is liable under subsection (1) or (2) if
12 that party can establish by a preponderance of the evidence
13 that:

14 (a) the department failed to follow the notice
15 provisions of [section 3] when required; or

16 (b) the release did not emanate from any vessel,
17 vehicle, or facility over which the party had any authority
18 or control and was not caused by any action or omission of
19 the party; or

20 (c) in the case of assessment of punitive damages,
21 that factors beyond the control of the responsible party
22 prevented the party from taking timely remedial action.

23 (5) (a) Costs of remedial action recovered pursuant to
24 subsection (1)(a) must be deposited in the fund.

25 [(b) Damages and penalties recovered pursuant to

1 subsections (1)(b) and (2) must be deposited in the
2 contingency fund of the legacy program state special revenue
3 account established by [section 5(5) of the Montana Legacy
4 Act, Senate Bill No. 277].]

5 Section 7. Rulemaking authority. The department is
6 authorized to adopt rules for the implementation of
7 [sections 1 through 7].

8 Section 8. Saving clause. This act does not affect
9 rights and duties that matured, penalties that were
10 incurred, or proceedings that were begun before the
11 effective date of this act.

12 Section 9. Severability. If a part of this act is
13 invalid, all valid parts that are severable from the invalid
14 part remain in effect. If a part of this act is invalid in
15 one or more of its applications, the part remains in effect
16 in all valid applications that are severable from the
17 invalid applications.

18 Section 10. Coordination instruction. (1) The
19 bracketed language constituting section 2(5) is effective
20 only if both this act and HB 12 are passed and approved. If
21 both this act and HB 12 are passed and approved, a citation
22 to section 2 of this act is added to the list of citations
23 contained in section 2 of HB 12.

24 (2) The bracketed language in section 2(3)(b) and (4)
25 and section 6(5)(b) is effective only if both this act and

1 [the Montana Legacy Act, Senate Bill No. 277] are passed and
2 approved.

3 Section 11. Effective dates. (1) Sections 1 through 6
4 and 8 through 10 are effective July 1, 1985.

5 (2) Section 7 and this section are effective on
6 passage and approval, but rules adopted pursuant to section
7 7 may not take effect before July 1, 1985.

-End-

SENATE PUBLIC HEALTH
PAGE SIX
MARCH 25, 1985

Curt Chisolm, deputy directors of the Department of Institutions, stood in support of the bill. He stated that it was fitting to change the name of the Swan River Youth Camp.

With no further proponents, the chairman called on the opponents. Hearing none the meeting was opened to a question and answer period from the Committee.

Senator Towe stated that the Swan River Youth Camp does not deal with youth and, therefore, should be changed.

Representative Bardanoue closed. He stated that this is a good bill.

ACTION ON HOUSE BILL 560: A motion was made by Senator Himsl that HB 560 BE CONCURRED IN. Motion carried.

Senator Himsl will carry this bill on the floor of the Senate.

ACTION ON HOUSE BILL 676: Representative Gene Donaldson of Helena introduced this bill. HB 676 is a regulation of underground storage tanks.

A motion was made by Senator Towe that HB 676 be amended on Page 9, line 9, to strike the "rights and duties that matured," Motion carried.

Senator Himsl asked how this will affect the operators of service stations being as there is no grandfather clause. Who will pay for this measuring and keeping track of the contents of the tanks to see if there is any leakage.

Senator Stephens stated that this is a noble attempt for the environment, however, next session perhaps all of the underground tanks should be placed above ground.

A motion was made by Senator Towe that HB 676 BE CONCURRED IN AS AMENDED. Motion carried with all present voting "yes" with the exceptions of Senator Newman and Senator Himsl voting "no".

Senator Towe will carry this bill on the floor of the Senate.

DISCUSSION ON HOUSE BILL 766: Representative Bob Ream of Missoula introduced this bill which is an act authorizing the Department of Health and Environmental Sciences to take remedial action to prevent or alleviate release of hazardous

SENATE PUBLIC HEALTH
PAGE SEVEN
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or deleterious substances into the environment; establishing a special fund for remedial action; providing for funding of the special fund and providing effective dates.

A motion was made by Senator Towe to accept the proposed amendments. Motion carried.

Senator Towe stated that he is still not comfortable with this bill as it is still too broad. He asked the chairman to please hold the bill until the next meeting.

ANNOUNCEMENTS: The next meeting of the Senate Public Health Welfare and Safety Committee will be held on Wednesday, March 27, 1985 at 12:30 in Room 410 of the State Capitol to executive action on the remaining bills.

ADJOURN: With no further business the meeting was adjourned.


SENATOR JUDY JACOBSON,
CHAIRMAN

ROLL CALL

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date: 3/25

SENATE
SEAT
#

[illegible]

Each day attach to minutes.

SENATE PUBLIC HEALTH
PAGE FOUR
MARCH 27, 1985

Senator Hims1 stated that he does not feel that they should start any new programs.

A motion was made by Senator Norman that HB 798 BE NOT CONCURRED IN. Motion carried with all present voting "yes" with the exception of Senators Newman and Jacobson, who voted "no".

Senator Stephens will carry this bill on the floor of the Senate.

Senator Towe arrived.

ACTION ON HOUSE BILL 766: House Bill 766 introduced by Representative Bob Ream of Missoula is an act authorizing the Department of Health and Environmental Sciences to take remedial action to prevent or alleviate release of hazardous or deleterious substances into the environment; establishing a special fund for remedial action; providing for funding of the special fund. and providing effective dates.

Karen explained the amendments which had been adopted earlier by the Committee.

Senator Towe addressed Section 6 of the bill, dealing with reimbursement and penalties, the proceedings and the defenses.

Senator Jacobson stated that this bill would establish a special fund and authorize the Department of Health and Environmental Sciences to use that money for the purpose of taking emergency, remedial action in cases of release of hazardous or deleterious substances into the environment.

A motion was made by Senator Lynch that HB 766 be concurred in as amended.

A substitute motion was made by Senator Towe that that bill be amended further on Page 2, lines 4 through 8. See attachments. Motion carried. Senator Lynch voted "no".

A motion was made by Senator Towe to amend the bill on page 2, line 3. Motion failed.

A motion was made by Senator Lynch that HB 766 BE CONCURRED IN AS AMENDED. Motion failed on a tie vote. Those voting "no" were: Senators Stephens, Hims1, Hager and Norman. Those voting "yes" were: Senators Jacobson, Lynch, Towe and Newman.

ROLL CALL

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/27

SENATE
SEAT

#

	NAME	PRESENT	ABSENT	EXCUSED
6	SENATOR JUDY JACOBSON, CHAIRMAN	✓		
5	SENATOR J. D. LYNCH, V. CHAIRMAN	✓		
42	SENATOR TOM HAGER	✓		
30	SENATOR MATT HIMSL	✓		
17	SENATOR TED NEWMAN	✓		
45	SENATOR BILL NORMAN	✓		
14	SENATOR STAN STEPHENS	✓		
26	SENATOR TOM TOWE	Late		

Each day attach to minutes.

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

MARCH 28, 1985

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order by chairman, Judy Jacobson on Thursday, March 28, 1985 in Room 410 of the State Capitol at 6:30 p.m.

ROLL CALL: All members were present. Karen Renne, staff researcher, was also present.

ACTION ON HOUSE BILL 766: House Bill 766 introduced by Representative Bob Ream of Missoula, is an act authorizing the Department of Health and Environmental Sciences to take remedial action to prevent or alleviate release of hazardous or deleterious substances into the environment; establishing a special fund for remedial action; providing for funding of the special fund and providing effective dates.

Karen explained the proposed amendments.

A motion was made by Senator Lynch that HB be amended as per Karens explanation. Motion carried. See amendments on the Standing Committee Report.

A motion was made by Senator Lynch that HB 766 BE CONCURRED IN AS AMENDED. Motion carried. See Roll Call Vote Sheet.. Senator Hager voted "no" with all others voting "yes".

Senator Newman stated that he sincerely hoped that this would not be abused, or else next session he will see that some changes are made.

DISCUSSION ON HOUSE BILL 235: Senator Jacobson stated that Senator Stephens had learned of some information which he would like to share with the committee before the bill would be on the floor.

Senator Stephens stated that the Medical Doctors feel that it is necessary for the qualified person helping the dentist to have advanced cardiopulmonary life support course. This is a two day course, however, one must at least be a registered nurse to take the course. Senator Stephens stated that he is checking into this matter tonight.

March 27, 1985

MEMORANDUM

TO: Elaine Gravely, Secretary
Senate Public Health, Welfare & Safety Committee
FROM: Karen Renne, staff researcher
RE: House Bill 766 ("MiniSuperfund")

The committee did not concur in House Bill 766 (tie vote), but it did amend the bill as follows:

1. Page 2, line 2.
Following: "imminent"
Insert: ", life-endangering,"
2. Page 2, line 16.
Following: "environment"
Insert: ", the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice"
3. Page 6, line 16.
Following: "subsection"
Strike: "(3)"
Insert: "(4)"

Amendment 1 was requested by Senator Towe; amendment 2 was requested by Senator Towe and drafted by Frank Crowley of the Attorney General's office; and amendment 3 corrects a drafting error.

Copies to: Senator Halligan
Senator Towe
Representative Ream
Brace Hayden

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE AND SAFETY

Date MARCH 28, 1985 HOUSE Bill No. 766 Time 6:42

NAME	YES	NO
SENATOR JUDY JACOBSON, CHAIRMAN	✓	
SENATOR J. D. LYNCH, VICE CHAIRMAN	✓	
SENATOR TOM HAGER		✓
SENATOR MATT HIMSL	✓	
SENATOR TED NEWMAN	✓	
SENATOR BILL NORMAN	✓	
SENATOR STAN STEPHENS	✓	
SENATOR TOM TOWE	✓	

Elaine Graveley
Secretary, ELAINE GRAVELEY

Chairman, SENATOR JUDY JACOBSON

Motion: A motion was made by Senator Lynch that HB 766

BE CONCURRED IN AS AMENDED. Motion carried.

ROLL CALL

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/2

NAME	PRESENT	ABSENT	EXCUSED
6 SENATOR JUDY JACOBSON, CHAIRMAN	✓		
5 SENATOR J. D. LYNCH, V. CHAIRMAN	✓		
42 SENATOR TOM HAGER	✓		
30 SENATOR MATT HIMSL	✓		
17 SENATOR TED NEWMAN	✓		
45 SENATOR BILL NORMAN	✓		
14 SENATOR STAN STEPHENS	✓		
26 SENATOR TOM TOWE	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

MARCH 26, 1985

MR. PRESIDENT

We, your committee on PUBLIC HEALTH, WELFARE AND SAFETY

having had under consideration HOUSE BILL No. 766

THIRD reading copy (BLUE)
color

REMEDIAL ACTION FUND TO ALLEVIATE OR PREVENT WATER CONTAMINATION

REAM ~~XXXXXXXXXX~~ (HALLIGAN)

Respectfully report as follows: That HOUSE BILL No. 766

be amended as follows:

1. Page 2, line 3.

Following: "health"

Strike: ", public welfare, or the environment"

2. Page 2, lines 4 through 8.

Following: "is" on line 4

Strike: remainder of line 4 through "75-2-103" on line 8

Insert: "either a petroleum product or listed as a hazardous substance under 40 CFR part 302.4 pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act"

3. Page 2, line 16.

Following: "environment"

Insert: ", the use of pesticides as defined in 80-6-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice"

4. Page 6, line 16.

Following: "subsection"

Strike: "(3)"

Insert: "(4)"

~~DO PASS~~

~~DO NOT PASS~~ AND AS AMENDED
BE CONCURRED IN

SENATOR JUDY JACOBSON

Chairman.

(To be kept current -- post bills when entering being heard or leaving committee.)

Form CS-32

STATUS SHEET

49TH

LEGISLATIVE SESSION

COMMITTEE ON NATURAL RESOURCES

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB 633	2/2/85	2/8/85	2/8/85	2/8/85					
HB 637	2/2/85	2/20/85	2/20	2/20					
HB 638	2/2	2/20	2/20	2/20					
HB 670	2/5/85	2/20	2/20	2/20					
HB 676	2/5/85	2/11 2/22 2/23	2/23			2/23			
HB 680	2/5/85	2/18 2/20	2/20			2/20			
HB 695	2/6/85	2/11/85	2/11/85			2/11/85			
HB 698	2/7/85	2/15/85	2/15			2/15/85			
HB 711	2/7/85	2/20	2/20			2/20			
HB 750	2/11/85	2/20 2/22	2/22	2/22					
HB 755	2/11/85	2/15	2/15	2/15					
HB 766	2/11/85	2/20 2/22	2/22	2/22					
HB 768	2/14/85	2/23	2/23			2/23			
HB 769	2/11/85	2/15	2/15	2/15					
HB 784	2/11/85	2/15	2/15	2/15					
HB 786	2/11/85	2/20	2/20						

Rep. Cohen closed by saying that now is not the time to refute data presented by industry representatives. He agreed that sewage treatment plants are the best places to address the problem of phosphorus, but that such solutions are expensive to install and operate, and could not be in place for several years. He said HB 711 would be a good step in allowing counties to consider their local options for addressing the phosphorus problem.

HOUSE BILL 846: Rep. Ted Schye, District 18, introduced HB 846, which he sponsored. He said the legislation would direct that adjudication of the Milk River basin be made the highest priority in the adjudication process being carried out by the state's water court. The Milk River, he said, has suffered serious droughts for the past ten years, and the people served by that river "are getting desperate." Adjudication of the basin is crucial, he said. He noted that Judge W.W. Lessley, chief water judge, has expressed no opposition to placing the Milk River at the top of the adjudication list.

No proponents nor opponents rose to testify on the bill.

Rep. Addy asked why no people who would be affected by the adjudication of the Milk River appeared to testify, and Rep. Schye said that some people had intended to do so, but were unable to travel to Helena.

HOUSE BILL 786: HB 786 was introduced by its sponsor, Rep. Dennis Nathe, District 19. He said the bill is a simple piece of legislation that would allow the department of state lands to forfeit deposits for agricultural leases if the bids on such leases have been determined to be frivolous or harassing.

Dennis Hemmer, representing DSL, spoke in favor of HB 786. A copy of his testimony is attached as Exhibit 14.

No other proponents, and no opponents rose to speak on HB 786.

There were no questions from committee, and Rep. Nathe closed without further comment.

HOUSE BILL 766: HB 766 was introduced in committee by the sponsor, Rep. Bob Ream, District 54. He said the bill would allow the department of health and environmental sciences to set up a "mini-superfund" to take action to prevent or alleviate the release of hazardous substances into the environment. He said that the federal superfund administered by the Environmental Protection Agency is not able to address the problems faced in Montana. He noted that 91 sites

in the state have applied for superfund aid, and only 11 sites have been granted money under that federal program. Several states have set up "mini-superfunds" to alleviate the hazards of toxic wastes, he said.

John Wardell, director of the Region 8 office of the EPA in Helena, supported HB 766, saying it fills the gap in federal legislation, and provides better remedial action than the federal program.

Brace Hayden, speaking on behalf of the governor's office, endorsed HB 766, saying it is a short, efficiently written bill that complements existing statutes.

John Drynan, representing the department of health and environmental sciences, said that agency supports HB 766. A copy of his testimony is attached as Exhibit 15.

George Ochenski, speaking for the Montana Environmental Information Center, noted that each representative on the committee comes from a district that contains at least one environmental contamination site that could be addressed under the provisions of HB 766.

Delores Barnaby, representing Montana Peoples' Action, noted that there are five instances of petroleum product contamination affecting residents of Lewis and Clark County. She said the investment that residents have in their homes and property is being lost, and that the state should begin clean-up efforts to aid those people.

Mike Stephens of Helena spoke as a private citizen, noting that he lives on the fringe of an area in which the wells have been contaminated. His neighbors, he said, are hauling their water, and have been doing so for some time. He said he awaits word that his own well is contaminated, and supports state efforts to solve the problem.

Marie McMurray, of Helena, said she has been hauling water since October of 1984, because her well has been contaminated from a source which has not yet been identified. She said the house she bought for \$44,000 four years ago, and into which she has put several thousand dollars in improvements, is now worth less than \$30,000 because of the contamination.

No opponents rose against HB 766.

Rep. Grady asked Rep. Ream who would be burdened with the cost of cleaning up environmental contamination resulting from 100-year old sites, and was told that there may be instances in which the party responsible cannot be located or made to pay, and that the state will bear the cost.

Rep. Ream closed by saying that the legal process of determining responsibility for environmental contamination could be lengthy and costly, but should not come in the way of remedial action to alleviate the effects of the contamination. He said no appropriation has been made to cover the costs of such action, but said a possible emergency fund might be allocated from the legacy program.

HOUSE BILL 637: Rep. Dennis Iverson, District 12, introduced HB 637, a bill that would revise the procedure for enforcing the annual fee and reporting requirements of the hard-rock mining law. He said the current requirements for notice of violation and citation for violation are expensive and time-consuming, and that HB 637 would allow notice by certified mail, and after a 30-day response period, suspension of permit.

Dennis Hemmer, speaking on behalf of the department of state lands, endorsed HB 637. He said the bill would simplify the department's annual report process. A copy of his testimony is attached as Exhibit 16.

Gary Langley, representing the Montana Mining Association, said that group supports HB 637, which would prevent bad operators from circumventing or breaking the law.

Jeanne-Marie Souvigney, speaking for the Northern Plains Resource Council, said that group would like to go on record in support of HB 637.

George Ochenski spoke on behalf of the Montana Environmental Information Center in support of HB 637.

No opponents rose against HB 637, and Rep. Iverson closed.

HOUSE BILL 638: House Bill 638 was also introduced by sponsor Dennis Iverson, District 12. He said the bill would eliminate two abuses of the small miners exemption to the hard-rock mining act. He said the bill would eliminate the use of the five-acre small miners exclusion to avoid reclamation and eliminate the practice of combining several small mining operations to form a big operation. The bill would also provide civil action to address the problem, he said.

Dennis Hemmer of the department of state lands spoke in favor of HB 638. A copy of his testimony is attached as Exhibit 17.

Gary Langley said the Montana Mining Association would like to go on record in support of HB 638.

George Ochenski supported HB 638 for the Environmental Information Center.

Jeanne-Marie Souvigney spoke in favor of HB 638 for the Northern Plains Resource Council.

There were no further proponents, and no opponents. There were no questions from committee.

HOUSE BILL 670: Rep. Dennis Iverson, sponsor of HB 670, introduced the bill, explaining that it would amend the hard-rock mining act to include tailings in the reclamation process.

Dennis Hemmer, of the department of state lands, rose in support of HB 670, saying it would resolve issues in the hard-rock act that need clarification. A copy of his testimony is attached as Exhibit 18.

Gary Langley endorsed HB 670 on behalf of the Montana Mining Association.

Jeanne-Marie Souvigney supported the bill on behalf of the Northern Plains Resource Council.

George Ochenski spoke in support of HB 670 for the Environmental Information Center.

There were no opponents, and no questions from committee.

EXECUTIVE ACTION:

HOUSE BILL 637: Upon motion by Rep. Raney, HB 637 was passed unanimously.

HOUSE BILL 638: Upon motion by Rep. Raney, HB 638 was passed unanimously.

HOUSE BILL 670: Upon motion by Rep. Raney, HB 670 was passed unanimously.

HOUSE BILL 846: Upon motion by Rep. Smith, HB 846 was passed unanimously.

HOUSE BILL 786: Having noted that HB 786 does not increase the amount of deposit required for agricultural uses, Rep. Ream moved to amend the title of the bill to delete a statement to that effect. On motion by Rep. Raney, the committee unanimously passed HB 786 as amended.

HOUSE BILL 766: Rep. Ream moved DO PASS on HB 766, but then withdrew that motion pending preparation of a statement of intent.

DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date February 26, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	X		
DRISCOLL, Jerry	X		
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John	X		
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

Testimony by DHES

in Support of

HB 766

The Montana Department of Health & Environmental Sciences would like to voice their support for House Bill 766. Montana, like many other states, finds itself facing a variety of threats to our environmental resources from hazardous wastes. Some of our problems are so significant that they have been designated as Superfund sites by the Environmental Protection Agency while others are more localized but still pose a serious threat to public health and the resources of Montana. It is the latter category that this bill is designed to address.

The Montana legislature traditionally has been unwilling to provide funds for unidentifiable problems but as a public health agency, we are seeing a significant increase in hazardous waste problems which demand our immediate attention. Our inability to predict disaster and request appropriate funding does not stop the people of Montana from expecting assistance from our agency. We may in fact be seeing only the so-called "tip of the iceberg" with respect to hazardous waste problems.

Hazardous wastes most frequently impact our groundwater resources and threaten the beneficial use thereof. During the last 48 months, our agency has documented approximately 50 incidents of groundwater contamination at 40 different locations in Montana. These locations cover the entire state and are not limited to major municipalities. I will not take up your time by going through each incident, but would like to review with you a couple that are typical and justify the need for the authority provided by this bill.

In August 1984 a fire destroyed a film stripping operation in the Helena Valley. An unknown quantity of cyanide used in the chemical process was lost into the groundwater. Cyanide is extremely toxic to humans. Several domestic

wells including one serving East Helena were downgradient of the contamination site. We were able to force the owner to install one monitoring well but he claimed to have no money to do any further work. Sampling of the well indicated cyanide concentrations nearly 100 times the level considered safe for drinking. Our agency did not have the resources to install additional wells and determine the extent of resource damage. We finally received help from EPA to install monitoring wells to monitor contamination. To date, no domestic wells have shown signs of contamination but the threat continues.

In another incident, the people are not so fortunate. In September of last year, we received a complaint of a gasoline odor in the Judith Gap water system. Subsequent investigations found that two of the town's three municipal wells were contaminated with petroleum products. Since that time the third well has shown similar contamination, leaving the community without a safe domestic water supply. The source of the contamination is thought to be one or more of several existing and abandoned fuel storage tanks in town. Again we lack the resources to assist the community in solving this problem.

When a hazardous waste threatens groundwater, several things are obvious.

- 1) Immediate response is necessary to minimize natural resource damage and protect the public health of the people.
- 2) Remedial action may be very costly.

The proposed legislation would establish a mechanism whereby the Department could, after notification of potentially responsible parties, proceed with remedial action as necessary to protect public health and natural resources.

The bill is intended to compliment existing legal authority such as the Montana Water Quality Act rather than duplicate that effort. Once a responsible party is identified, civil proceedings may be initiated to recover costs, damages, or penalties.

Our agency has a good "track record" for obtaining civil penalties in conjunction with past enforcement actions. Civil penalties collected under the Water Quality Act alone resulted in over \$30,000 being paid to the State general fund. It is our hope that in time, recovered costs would be more than adequate to fund the program.

In summary, the proposed legislation would fill an important void in our environmental program and provide us with the resources to adequately respond to the needs of the people in this state. It is intended to be a burden only on those persons responsible for resource damage rather than on any industry as a whole. We ask your favorable consideration of this important legislation.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEEBILL HB 766DATE 2/20SPONSOR TEAM

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OF POS
R. A. Ellis	Helena	Montana Water Develop	X	
GEO. OCHENSKI	HELENA	ENV. INF. CENTER	X	
Steve Schmidt	Helena	DNES	X	
John E. Warden	Helena	EPA	X	
John W. Warden	Helena	WAC 5	X	
Kathleen Redding	Helena	Me & my contaminated well	X	
Maria McMurtry	Helena	Me	X	
Brenda Lewis	Helena	myself	X	
Jack Redding	Helena	Me & my contaminated well	X	
Don Redding	Helena	Me	X	
Judie Silcox	Helena	self	X	
Al Redding	"	"	X	
Delores Barnaby	Helena	Peoples Action	X	
Becky Nash	Helena	self	X	
Muriel Dubet	E. Hel.	self	X	
Laura Dubet	East Helena	self	X	
Brian Thane	Helena	Peoples Action	X	
KATHLEEN HILLAND	Helena	Peoples Action	X	
Jim McMurtry	Helena	self	X	
Mrs DW Lane	Helena	self	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

M. W. Stephen Helena self X
 WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Rep. Miles then commented that although she supported HB 913 in committee, she believed that SB 277 should not be ignored, and encouraged the committee to carefully study and compare both bills.

HOUSE BILL 860: Rep. Ream moved DO PASS on HB 860, and Rep. Raney moved the amendments suggested by Rep. Brown, which were approved. The committee then unanimously approved a DO PASS AS AMENDED motion made by Rep. Kadas.

HOUSE JOINT RESOLUTION 35: Rep. Raney moved DO PASS on HJR 35, which was unanimously approved.

HOUSE BILL 750: Rep. Kadas moved DO PASS on HB 750. He then questioned whether the state has the constitutional right to require payment for a facility over which the federal government, and not the state, has authority. Rep. Ream commented that it is arguable that the state has no authority at all over some facilities. Rep. Krueger said the state clearly has a right to be an intervenor in facility siting cases.

Rep. Miles suggested that the committee discuss the question of contested and uncontested proceedings. Rep. Raney said that as it stands, the bill could leave significantly affected people with no right to contest centerline locations. He suggested that on page 5, line 5, the word "noncontested" be replaced with the word "contested," and Rep. Miles so moved.

Rep. Addy said that centerline location is a determination of considerable importance to some people, and would be subject to subsequent review.

Rep. Krueger explained that for a contested case hearing, notice would be required, all parties would be given an opportunity to be heard, and the hearing would be evidentiary, and not simply informative, as would be the case in a noncontested hearing. He added, however, that even a contested case hearing could be fairly informal. The motion failed on a tie vote. (A copy of the roll call vote on the amendment follows the attached standing committee reports.)

Rep. Kadas's motion of DO PASS on HB 750 carried unanimously.

HOUSE BILL 766: Rep. Ream moved DO PASS on HB 766, which carried unanimously. He also moved the statement of intent, which was approved unanimously.

DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date February 22, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	X		
DRISCOLL, Jerry	X		
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John	X		
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

STANDING COMMITTEE REPORT

PAGE 1 OF 2

.....February 22..... 19 55.....

MR.SPEAKER:.....

We, your committee onNATURAL RESOURCES.....

having had under considerationHOUSE..... Bill No.756.....

FIRST reading copy (WHITE)
color

AN ACT AUTHORIZING DHEC TO TAKE REMEDIAL ACTION TO PREVENT OR
ALLEVIATE RELEASE OF HAZARDOUS OR DELETERIOUS SUBSTANCES INTO
THE ENVIRONMENT

Respectfully report as follows: That.....HOUSE..... Bill No.756.....

DO PASS

STATEMENT OF INTENT ATTACHED

STATE PUB. CO.
Helena, Mont.

.....DENNIS IVERSON,.....

Chairman.

COMMITTEE SECRETARY

STATEMENT OF INTENT ON HOUSE BILL 766

This bill establishes a special fund and authorizes the department of health and environmental sciences to spend money from that fund for the purpose of taking emergency, remedial action in cases of release of hazardous or deleterious substances into the environment. Rulemaking is required for the implementation of these provisions. It is the intent of the legislature that the department be authorized to adopt rules clarifying and setting forth more detailed procedures and criteria in such areas as:

- (1) definition of remedial actions to include such things as clean-up and restoration of water resources, provisions of alternate sources of supply, relocation of persons and property in imminent danger of injury or damage, investigation and monitoring of releases of hazardous and deleterious substances;
- (2) procedures for identifying responsible parties and notifying them of the department's intent to take remedial action;
- (3) criteria for taking emergency actions in cases where prior notification to the responsible party is not possible;
- (4) procedures for retaining consultants to perform remedial actions under the department's direction;
- (5) procedures for accounting for funds expended in performing remedial actions; and
- (6) procedures for coordination of remedial actions with the activities of other state or local government agencies with relevant expertise or authority.

CHAIRMAN--REGAN, PAT
NORMAL SCHEDULE=> SITE: ROOM 108

DAYS: M-TU-W-TH-F

TIME: 8:00-11:30 A.M.

SECRETARY-KINSEY, SYLVIA

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0634		3/26	3-26	CONCUR		3-26
LORY, EARL C.			SPECIAL REVENUE ACCOUNT FOR OPERATIONS OF SECURITIES DIVISION			
HB0667		4/09	4-9, 4-12	CONCUR		4-12
DONALDSON, GENE			DETENTION OF ALLEGED DELINQUENT YOUTHS AT MOUNTAIN VIEW SCHOOL			
HB0676		4/04	4-4	CONCUR		4-4
DONALDSON, GENE			REGULATION OF UNDERGROUND STORAGE TANKS			
HB0684		4/09	4-9, 4-12	CONCUR		4-12
WALDRON, STEVE			TO APPROPRIATE FUNDS TO VISION QUEST			
HB0754		4/10	4-10, 4-18	CONCUR		4-18
FRITZ, HARRY			RETIREMENT ALLOWANCE ADJUSTMENT UNDER MUNICIPAL POLICE RETIREMENT SYSTEM			
HB0759		3/26	3-26	CONCUR		3-26
LORY, EARL C.			SPECIAL REVENUE ACCOUNT FOR OPERATIONS OF INSURANCE DIVISION - STATE AUDITOR			
HB0766		4/04	4-4	CONCUR AS AMENDED		4-4
REAM, BOB			REMEDIAL ACTION FUND TO ALLEVIATE OR PREVENT WATER CONTAMINATION			
HB0779		4/04	4-4	CONCUR AS AMENDED		4-4
CONNELLY, MARY ELLEN			CREATES SPECIAL LAW ENFORCEMENT ACCOUNT - APPROPRIATES PROCEEDS			
HB0792		4/22	4-22	CONCUR		4-22
GARCIA, RODNEY L.			PROVIDING FOR APPOINTMENT OF A COORDINATOR FOR ETHNIC AFFAIRS			
HB0812		4/17	4-17, 4-18	CONCUR		4-18
BRADLEY, DOROTHY			CREATE SCIENCE AND TECHNOLOGY DEVELOPMENT BOARD - PROVIDING FUNDING			
HB0842		3/22	3-22, 3-26	ADVERSE REPORT		3-26
LORY, EARL C.			STATE EMPLOYEE CONTINGENCY FUND - UNUSED LEAVE LIABILITY AND VACANCY SAVINGS			

other members make considerable contributions. The ranch has been making money in the last couple of years. The major change was in the feed lot. The high quality of meat we have put in a policy of the prison selling our prime yearlings at the public sales and we have required the prison to buy their slaughter cattle 2 or 3 year old cattle for use in the institutions. We are buying 2 and 3 year old cattle and we are making more on the market on the prime yearlings and buying the other cattle for less money. The only place we are losing a little money is in the slaughter house. \$200,000 a year before and we are now down to about \$25,000 as of the last report. We have the prison down to a very small loss. We have to hire some civilians to help to supervise at the slaughter house.

Proponents for House Bill 490. Curt Chisolm, Deputy Director, Dept of Institutions, said it has passed all the audit recommendations. The auditor suggested it raised the problem of ending fund balance and that it would include all assets of the industry. That would include our supplies, etc. and it does go over the limited requirement of the law. They suggest we come in for legislation that would clarify our dilemma. We are making enough income to keep ourselves in business. If there are ever any profits, they could easily be monitored by the legislature. They could then be reverted.

There were no further proponents, no opponents, and Senator Regan asked if there were any questions from the committee.

Senator Keating: None of this money can be expended without appropriation?

Senator Regan: Yes, you have to give spending authority.

Senator Regan declared the hearing closed on House Bill 490 and suggested since HB 779, 676 and 766 had been pulled from the Senate and brought down for the LFA to check since there seemed to be a question of financing, that they could probably be handled quickly. She said the LFA office had checked them all out and said they were okay and that she had assured the Senate that was the only reason they were to be brought to the committee. She asked Curt Nichols, Legislative Fiscal Analyst to address these bills.

Curt Nichols: In looking at these bills, 779 and 776 have the language to make them a statutory appropriation. H. B. 676 is not a statutory appropriation so there is no problem.

Senator Regan: I would entertain a motion that House Bills 676, 766 and 779 go back up to the floor.

DISPOSITION OF HOUSE BILLS 676, 766 and 779: MOTION by Senator Manning that House Bills 676, 766 and 779 be concurred in and go back on Second Reading in the Senate.

SUBSTITUTE MOTION by Senator Keating to segregate the bills.

CONSIDERATION OF HOUSE BILL 779: Senator Himsl: Is this something different to make a statutory appropriations? 779 refers to House Bill 12 and it establishes statutory appropriations. It has this language that refers to House Bill 12. I think the question of whether 12 is going to get over here and what happens might be something we should know.

Senator Regan: All three of these bills deal with this and we brought this down to look at them along with House Bill 12. We do not have House Bill 12, and may not get it. Curt has looked this over. All three of these bills before us were on 2nd reading when I brought them down here.

Senator Himsl: If we pass this it does not mean anything unless H. B. 12 passes?

Senator Regan: That was the question I had, and I would ask Curt to address this.

Curt Nichols: The two bills, 779 and 766 which are coordinated with H. B. 12. They would have a statutory appropriation and it means these funds under law enforcement, etc., would not need a biennium appropriation by statute. If H. B. 12 fails, then the language in these bills would be legal.

Senator Himsl: Is that what we really want to do?

Senator Regan: These are pass through monies, are they not?
Federal monies?

Curt Nichols: Federal and collections that are designated for a special purpose.

Senator Aklestad: These funds could be available for other uses?

Curt Nichols: Some are penalties. They are in the law enforcement assistance account. These are recoveries from drug busts, etc.

Kim Kradolfer, Assistant Attorney General, said this would just include properities that are forfeiture from federal acts. The Federal act would require that the use of the funds go exclusively to state and local law enforcement purposes and no money from them unless we can assure them it cannot go or find its way into the general fund. We have to assure them it goes directly into these accounts.

Senator Himsl: I can understand that, but if we give up the right for appropriation--if we want to put the money into a drug appropriation we could do it but we should have the right to do that.

Senator Keating: I understand right now the Feds have close to \$1 million they have confiscated in the state. The money is held up now pending this particular bill under section 1 of the

law, to establish the funding mechanism in order to spend it. Can money be spent from that account without appropriations and does that section provide that any monies have to be appropriated by the state legislature?

Senator Regan: What you are saying is that this is a statutory appropriation. If so, then I agree with Senator Hims1 in Section 4. I am a little leary of this too. I would hate to see the A. G. have a permanent authority to use this money as he sees fit.

Senator Haffey: I guess the federal law together with the language in this bill limits the latitude of the A G to use as listed in section 3?

Kim Kradolfer: I think under this, you would not. The Federal statute would allow more latitude.

Senator Haffey: What do you think of the idea of this. Does it take much judgment or knowledge to know how much for one rather than another?

Kim Kradolfer: I would be prejudiced on this. I think you would have to have some insight into what is happening. Sometimes they may not be able to make it public since it could focus on a legal problem.

Senator Gage: Regardless of statutory appropriation, are the various departments limited by no spending authority beyond the total that the appropriation that has been given them by the Finance and Claims and Legislative Appropriation in the budget or is that spending authority limited to the statutory appropriation?

Curt Nichols: I think statutorily the only limit is the amount of money available.

Senator Gage: Could we then say that in no event the statutory and legislative appropriations be in excess of the spending authority given by the legislature?

Curt Nichols: The appropriation is the spending authority. This differs in that we leave an open end on it.

Senator Haffey: House Bill 12 is where the decision is made as to whether brought in for budget amendment or not. If it passes, then it takes effect, if not then the reference drops out when you read it this is nothing more than the creation of an account and the appropriation would have to go through the budgetary process.

Curt Nichols: If House Bill 12 fails this would be the vehicle.

Senator Haffey: On line 23, if not passed and approved etc. It would be void. That bracket material in the bill is the key. If you remove that, this language is permanently appropriated. They would not have to come in to have it appropriated.

Curt Nichols: Yes. It is my understanding that it would be a statutory amendment.

Senator Regan: House Bill 12 was to come here. That is why I had them brought down to look at all three together. Now you are telling us that either way it will be statutory. If so then we are back to Senator Himsl's question--Is that what we want to do?

Senator Manning: More money and more authority to sell. It will put the money in the coffers with the passage of this bill.

Kim Kradolfer: Yes.

Senator Bengtson: The other question. If you get the statutory authority, this is a statutory appropriation and you don't have to budget amend that money and there is no need for additional appropriation for it.

Kim Kradolfer: That is my understanding.

Senator Bengtson: What sort of follow-up do we have.

Curt Nichols: The expenditure of the funds are on SBAS and audited by the auditor.

Senator Regan: If this were not to be a statutory appropriation but an annual one you would have to come in and tell us how much and ask for the authority. What is your objection?

Kim Kradolfer: I don't have any. To meet the federal requirements this may not work. From discussions with the LFA and the Legislative Council, we would not have to convince the federal government that it could not possibly get into the general fund, etc.

Senator Keating: The Feds are trying to say you can't take any of this money. It has to stay in the law enforcement. We are specifying in this bill, the drug task force. The probability of accumulating a large account and not being able to use it for other law enforcement purposes is here. I can foresee other law enforcement purposes other than drugs.

Kim Kradolfer: The kinds of things the A G may use these funds for would be set by law under specific guidelines by the federal government and would go for paying expenses. She said requests for deferral to state forfeiture proceedings, or for transfers of property or proceeds of asset seizures, are to be filed by the requesting state or local agency and should be filed no later than thirty days after the date of seizure (specific procedures and forms for this purpose are being developed). All requests are to be filed with the investigative agency.

Kim Kradolfer continued by reading the policy of the Department of Justice Assets Forfeiture fund. She said the Attorney General will delegate the administration of the Department of Justice Assets Forfeiture Fund to the United States Marshals Service. It will operate under guidelines developed by the Subcommittee on Asset Forfeiture, of the Department's Forum for Cooperative Strategy. The Subcommittee will establish regulations and policies, consistent with legislative intent, to collect proceeds for the fund from the sale of forfeited property (after the payment of non-salary expenses), to determine uses of the fund money, and to resolve differences that may arise.

The following, in order of priority, excluding government salaries, will be the uses of the fund:

1. payment of expenses incurred by the U. S. Marshals Service for the care and custody of the seized and forfeited property;
2. payment of expenses incurred by the investigative agency in the seizure and forfeiture of the property;
3. payment of expenses incurred by state and local agencies which assist in the seizure and forfeiture of the property;
4. payment of liens and mortgages;
5. payment of expenses of remission or mitigation of forfeited property;
6. payment of awards;
7. payment to equip, for law enforcement purposes, conveyances placed into official use; and
8. purchase of evidence.

That would be the actual limit of what it can be used for.

Senator Himsel: In paragraph 4 of the bill. There is a lot of flexibility in that. Payment of over time, etc. It seems to me that covers the whole water front. My objection is that it is a permanent appropriation.

Senator Jacobson: You mentioned earlier that one of the objections might be that if you had to come in and ask for money for specific uses it could destroy the confidentiality of the effort.

Kim Kradolfer: Dissemination of information. You could even be telling them there is going to be a big undercover investigation going on.

DISPOSITION OF HOUSE BILL 779: Substitute Motion by Senator Story in section 4, line 10 strike "permanent appropriation" and in line 12 strike "permanently"

Senator Smith: Line 3, page 9 and also not to exceed \$220,000 federal fund that would have to be authorized in the appropriation bill. When appropriated, the federal government will pull the funds.

Rae Hoffman, Public Health Department, said he would like to answer Senator Smith. The legislation is dead at the end of the biennium. Your question as far as the enabling legislation is that the money is there to allow us to use when 500 comes before this committee. At that time the Department will propose an amendment to you. This is federal EPA funding. We are aware that the money may be coming to us. House Bill 500 is specific and will be brought before you every biennium and there is no commitment for future legislatures or any future program funding.

Senator Smith: I hear this dozens of times and it doesn't always set.

Rae Hoffman: We have brought everything before you from the Health Department and have not started any programs.

Senator Smith: But you often come back and say federal funds are out and we need funds, and it is running out, and it is such a good program, etc.

Rae Hoffman: In regard to what you said. You have over \$3 million in general funds that you do not have to spend in the Health Department. Federal funds have come in and replaced them.

DISPOSITION OF HOUSE BILL 676: Senator Manning's motion that 676 do pass was voted and passed, unanimous vote.

CONSIDERATION OF HOUSE BILL 766: Senator Regan said this is another statutory appropriation. Curt, would you address this?

Curt Nichols: This bill makes a statutory appropriation of the Environmental Protection fund. It coordinates with H. B. 12. If I understand this correctly, it will make a statutory appropriation with or without H.B. 12. If you look at page 8 and 9.

Senator Hims1: Hasn't this bill been amended? This isn't the copy that came out of Public Health, is it?

Senator Regan: There are amendments, but none of the amendments address the funding. I am asking that we look at the funding mechanism only and approve or not that part of it. If you look at pages 3 and 4 and pages 8 and 9.

Curt Nichols: The funds in this Environmental Protection Control are to be put as a statutory appropriation as I read the bill and the language is in the bill to make it statutory. The funding is found in Senate Bill 277.

Senator Christiaens: From what I understand that is probably dead in the House.

Curt Nichols: There are two sources of revenue. One provides part of the funding. Without 277 the penalties and charges would remain.

Senator Regan: What happens if Senate Bill 277 fails. It is in difficulty in the House. Are there still monies collected by fines that would go into the special account and be statutorily appropriated out?

Don Willems, Department of Public Health, said yes.

Senator Aklestad: Through appropriation process now? Legal budget at this time--is there a certain amount of money in the legal budget for enforcement? At the present time does it go back to the general fund?

Rae Hoffman, Public Health, said once you collect a fine, it has the ability in some cases, of collecting its expenses like travel for instance, and the rest goes back to the general fund.

Senator Smith: One part of the bill which bothers me--on page 6, line 23 "If the responsible party fails, without sufficient cause, to properly provide remedial action upon notification by the department pursuant to [section 3(3)(b)], the responsible party may be liable for punitive damages in an amount not to exceed two times the amount of any costs incurred by the department pursuant to [section 6]." Didn't we pass a punitive damage bill that would change this?

Senator Regan: I think this is an issue you can take up upstairs.

DISPOSITION OF HOUSE BILL 766: MOTION by Senator Aklestad that we have Curt clean up the language so that it is not a statutory appropriation and that they come in to the Legislature and come in in that manner. Whatever other places in the bill that would need fixing to make this carry through.

Senator Bengtson: What is your objection to having it a statutory appropriation to use the finances.

Senator Aklestad: I don't think we should lose our authority over many of these funds as to appropriating it out.

Senator Regan: Curt, when we have budgets come in are the statutory funds included as a part of your analysis?

Curt Nichols: Typically not. It is not for consideration by the Legislature and unless a specific problem, we would not.

Senator Regan: It would seem to me that while not a concern it really should be reflected in our ability to appropriate it. It would be of concern to see what they get and could see in effect what they have. Couldn't they do this?

Senator Himsl: This is the first time that I have seen when we come into a committee and put into a statute what the funds are to be. If we are going to statutorily appropriate funds then what is the appropriation for?

Rae Hoffman: Maybe I can give a little insight into this. The Department of Health is directly responsible for this. Two years ago on the budget amendment bill there was clear language that says the Department of Health can spend any funds they receive. They sent through the A.G. office and asked for his opinion as to what that means. The A.G. says it is statutory--the Department of Health would not use that but could have. We felt that you folks should have the ability to look at it. This would limit it. If we were to come to you before each action--what happens if you give us \$1 million worth of authority for "enforcement of" a law or rule and you give us a limited authority. The department is responsible to the public and they have to certify an emergency problem.

Senator Regan: If we do that we have expanded your spending authority and you could have fun and games.

Rae Hoffman: If you line item that even at 10% the transferability cannot--only enforcement ability and you would have the tracking authority on SBAS.

Senator Himsl: Maybe I am not hearing very well. Would you run that by again? The A.G. gave you an opinion that you don't have to go through budget amendment for federal fund or special revenue funds and the only case would be for state general funds?

Rae Hoffman: In the Department of Health the Montana Codes Annotated, the Department of Health can accept, receive or expend. We have never used that. H.B. 766 eliminates the language in that.

Senator Keating: Wherever we expand their spending authority, we are dealing only with the federal funds and the limitation is the amount of federal dollars for the purpose.

Senator Bengtson: The federal government lays out some guidelines for what you can spend the money for.

Rae Hoffman: That is true. The legislation the Department of Health has takes into consideration the timely action in case of epidemics, etc. If we have to wait for permission, we could put life and limb in danger. We would want to know what could happen if we did. We did not use the authority.

Senator Story: That is all good and well, but in Article 8, sections 12 and 14 they deal with this. (He read from the Montana Codes.) I think if you put it in the statutes permanently we would be exceeding what the constitution says.

Senator Bengtson: That is what House Bill 12 tries to do. We are constantly coming up with "what is a statutory appropriation" etc. Where is House Bill 12?

Senator Aklestad: I was going to ask a question. Getting back to my motion, I would like to see H. B. 766 have language put in like the language in the other one so that we could still see the figures. We could ask Curt to clean up the language.

Senator Aklestad asked Rae Hoffman to work with Curt Nichols to work out the amendment so that if the money becomes available you can spend it.

MOTION was voted, passed, unanimous.

The original motion to pass, was changed to pass as amended, voted and passed, unanimous.

DISPOSITION OF HOUSE BILL 490: MOTION by Senator Bengtson that we concur in House Bill 490. Voted, passed, unanimous.

DISPOSITION OF HOUSE BILL 203: MOTION by Senator Jacobson that on page 4, line 17 we strike "955,000 and insert \$1,755,000. It adds \$800,000 to the account. This is Dr. Drynan's Child Nutrition amendment on WIC. amendment attached as exhibit 9.

Senator Aklestad: What are the other special revenues in this Federal and other?

Curt Nichols: Federal and other is the title of a fund. There may not be other funds in the account.

Senator Regan: Senator Hims1 has a sheet that shows a transfer of the language. We will get those sheets for you.

QUESTION was called on the Jacobson amendment, voted, passed, unanimous.

MOTION by Senator Jacobson on page 4, line 20 following line 20 to insert "Rabies Vaccine \$40,000. Federal and other revenue" amendment attached, exhibit 6. She then read the reason which is given on the exhibit.

Senator Aklestad: Is this additional money for rabies? There are already monies in there. There are some of those in the general fund?

Rae Hoffman: The last session gave us up-front money. \$10,000 in general fund to start the rabies account. This amount does not increase any general fund right now and there is general fund here.

Senator Aklestad: On the other one, did we have the same situation there where we had general fund money in before for start-up?

Senator Jacobson: No.

Senator Regan: With the \$40,000 and \$10,000 -- did they go back into the general fund?

Rae Hoffman: The appropriation died. The state had bought a supply of vaccine and it is available to get to the areas where it is needed.

Senator Smith: There was some general fund for control of Rabies but that is in the Department of Livestock, not in here.

Question was called, the amendment was voted, passed, unanimous.

Senator Regan: There was an amendment by the Department of Commerce. After line 10, insert "Aeronautics 29,890 Special Revenue" She said this is realized from settlement of a tax protest and the money will go to pay for the Yellowstone Airport fund. Amendment and explanation attached as exhibit 8.

Senator Manning moved the amendment, voted, passed, unanimous.

Senator Regan: There is another amendment handed in by Mr. Robinson that would amend page 5, line 24 "strike 11,000 and insert 32,750", page 6, line 2, "strike 11,000 and insert \$32,750" and Page 6, line 3 "following LIBRARY insert In the amount of \$11,000 and for the Montana river study in the amount of \$21,000.

Motion by Senator Manning, voted and passed with Senators Keating, Aklestad and Hammond voting no.

Senator Regan: On page 2, line 21 on the Montana Arts Council I believe there is an amendment. This would change the figures and I believe Esther has them.

Senator Bengtson: I would move we strike the figure here and add 12,010 to spend the grant and also 38,748 for cultural and asthet. program. Curt can get the figures.

Voted, passed, unanimous.

Senator Aklestad: On the folk life project did we have an audit on the monies we program in?

Senator Bengtson: We did not deal with it in our budget. We turned it over to LRP. I odn't think they got any money.

Representative Bardanouve: Some.

Senator Bengtson: This must be in addition then?

Representative Bardanouve: This appropriation will be for this biennium. What you were dealing with was the 87 biennium. This is in addition to what they got in '83.

Senator Bengtson: How does it interphase with the other?

Representative Bardanoue: This had nothing to do with the present coming biennium.

Senator Bengtson: Did you have a list of what the projects were on the amendment?

Representative Bardanoue: I never saw them before I came into this room.

Senator Regan: These are Natural Endowment of Arts grants. I understand there is a committee that grants it on a local level.

Senator Hammond: We went through about 90 of them before.

Senator Regan: I think this is some that were from before.

Senator Himsl: Before we move the bill, aren't we looking at the Boulder issue?

Senator Regan: I would ask Curt to address this.

Curt Nichols: They have brought the issue before us so that they don't get caught up with the question of authority and by coming to this committee they can budget amend.

Senator Himsl: Just so there is an understanding.

Curt Nichols: There should be an understanding in the bill.

Senator Haffey: If we ask to just pass some language to put it in to allow the Department of Institutions to spend what comes because of the fire that takes care of it.

Curt Chisholm: That, or just a statement from the committee that we can spend it.

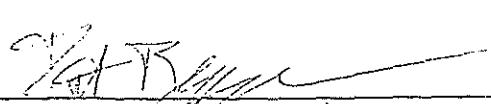
Curt Nichols: I think if you just have it in the minutes that will be enough. It will make it clear that they can ask for the authority to spend it on a budget amendment.

Senator Jacobson: MOTION to concur in H. B. 203 as amended. Passed.

Senator Bengtson: I would want to be sure that the minutes reflect that the Department of Institutions can make a budget amendment to have the authority to spend the insurance money from the fire. Voted and passed.

The Jacobson amendment and the Bengtson amendment were both unanimous votes.

The meeting was adjourned



Senator Pat Regan, Chairman

ROLL CALL

SENATE FINANCE AND CLAIMS

COMMITTEE

49th LEGISLATIVE SESSION - - 185

Date 4-4-85

NAME	PRESENT	ABSENT	EXCUSED
SENATOR REGAN	✓		
SENATOR HAFLEY	✓		
SENATOR JACOBSON	✓		
SENATOR AKLESTAD	✓		
SENATOR HAMMOND	✓		
SENATOR LANE	✓		
SENATOR CHRISTIAENS	✓		
SENATOR GAGE	✓		
SENATOR HIMSL	✓		
SENATOR STIMATZ	✓		
SENATOR BOYLAN	✓		
SENATOR STORY	✓		
SENATOR SMITH	✓		
SENATOR MANNING (Dick)	✓		
SENATOR BENGTON	✓		
SENATOR KEATING	✓		

VISITORS' REGISTER

SENATE AND HOUSE COMMITTEE _____

BILL _____

DATE _____

SPONSOR _____

NAME	REPRESENTING	RESIDENCE	SUPPORT	OPP
Carleen Hamie	Int Arts Council	Helena		
Jim Williams	OSL	Helena		
BOB KUTHEADON	JUSTICE	HELENA		
SUSAN HARTEN	✓	—		
Al Gelfe	High Safety - Justice	"	HB 203	
Laurie Ekanger	Purchasing/Admin	"	HB 203	
Deane Blanton	General Services	Helena	HB 203	
RD Mow	ORPD	"	203-	
John Skufen	Livestock	"	HB 203	
Les Graham	"	"	"	
Mary Ewen	Agriculture	"	"	
Norma Rosenthal	DBFP		HB 203	
Lois Parker	State Library	Helena	HB 203	
Clyde Hainbrid	DBPAC	HLA	HB 203	
Don Williams	Dept. of Health	"	6768766	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

April 4

1985

MR. PRESIDENT

We, your committee on Finance and Claims

having had under consideration House Bill No. 766

third reading copy (blue)
color

REMEDIAL ACTION FUND TO ALLEVIATE OR PREVENT WATER CONTAMINATION

REAM (Halligan)

Respectfully report as follows: That House Bill No. 766,
be amended as follows:

1. Title, line 14.
Following: "FUNDING"
Insert: "AND APPROPRIATION"
2. Page 3, line 15 through line 19.
Following: "(4)" on line 15
Strike: through "governor." on line 19.
3. Page 3, line 25 through line 2 on page 4.
Strike: line 25 on page 3 through line 2 on page 4 in their entirety
4. Page 3, following line 11.
Following: line 11
Insert: "Section 9. Appropriation. All funds received in the
environmental quality protection fund in the biennium ending June
30, 1987, are appropriated for the purposes described in subsection
(2) of section 2."
Re-number: Subsequent sections
5. Page 2, line 18; through line 23.
Strike: subsection (1) in its entirety
6. Page 3, line 24.
Strike "(2)"

XXXXXX

XXXXXXXXXX

SENATOR PAT REGAN

Chairman.

(continued)

EE 766

Finance and Claims

Page 2 of 2

APRIL 4, 1985

7. Page 9, line 4.

Following: "through"

Strike: "10"

Insert: "11"

AND AS AMENDED

BE CONCURRED IN

Senator Pat Regan